
Presidential Documents

Title 3—

Proclamation 10339 of February 4, 2022

The President

To Continue Facilitating Positive Adjustment to Competition From Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled Into Other Products)

By the President of the United States of America

A Proclamation

1. On January 23, 2018, pursuant to section 203 of the Trade Act of 1974, as amended (the “Trade Act”) (19 U.S.C. 2253), the President issued Proclamation 9693, imposing a safeguard measure for a period of 4 years that included both a tariff-rate quota (TRQ) on imports of certain crystalline silicon photovoltaic (CSPV) cells, not partially or fully assembled into other products, provided for in subheading 8541.40.6025 of the Harmonized Tariff Schedule of the United States (HTS), and an increase in duties (safeguard tariff) on imports of CSPV cells exceeding the TRQ and all imports of other CSPV products, including modules provided for in subheading 8541.40.6015 of the HTS. Proclamation 9693 exempted imports from certain designated beneficiary countries under the Generalized System of Preferences from the application of the safeguard measure.

2. Clause (4) and Annex I of Proclamation 9693 directed the United States Trade Representative (USTR) to establish procedures for interested persons to request the exclusion of particular products from the safeguard measure. These provisions also authorized the USTR, in consultation with the Secretary of Commerce and the Secretary of Energy, to determine whether a particular product should be excluded, and, upon publication of a determination in the *Federal Register*, to modify the HTS to implement such determination. Furthermore, they authorized the USTR to modify or to terminate such determinations. Effective June 13, 2019, the USTR excluded bifacial solar panels that absorb light and generate electricity on each side of the panel and that consist of only bifacial solar cells that absorb light and generate electricity on both sides of the cells (bifacial modules). Exclusion of Particular Products From the Solar Products Safeguard Measure, 84 FR 27684 (June 13, 2019).

3. On February 7, 2020, the United States International Trade Commission (USITC) issued its report, pursuant to section 204(a)(2) of the Trade Act (19 U.S.C. 2254(a)(2)), on the results of its monitoring of developments with respect to the domestic solar industry (USITC, Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Monitoring Developments in the Domestic Industry, No. TA–201–075 (Monitoring)). In its report, the USITC found that, following imposition of the safeguard measure, prices for CSPV cells and modules declined in a manner consistent with historical trends, but that prices were higher than they would have been without the safeguard measure.

4. On March 6, 2020, the USITC issued an additional report pursuant to a request from the USTR under section 204(a)(4) of the Trade Act (19 U.S.C. 2254(a)(4)), regarding the probable economic effect on the domestic CSPV cell and module manufacturing industry of modifying the safeguard measure to increase the level of the TRQ on CSPV cells from the current

2.5 gigawatts (GW) to 4.0, 5.0, or 6.0 GW (USITC, Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Advice on the Probable Economic Effect of Certain Modifications to the Safeguard Measure, No. TA–201–075 (Modification)). In its report, the USITC advised that increasing the TRQ would help to continue growth in solar module production, but that expanded access to imported cells not subject to safeguard duties would put downward pressure on prices for cells made in the United States.

5. After taking into account the information provided in the USITC's reports, and after receiving a petition from a majority of the representatives of the domestic industry with respect to each of the following modifications, and under section 204(b)(1)(B) of the Trade Act (19 U.S.C. 2254(b)(1)(B)), the President issued Proclamation 10101 on October 10, 2020, in which he determined that the domestic industry has begun to make a positive adjustment to import competition, as shown by the increases in domestic module production capacity, production, and market share. Proclamation 10101 also:

(a) revoked the exclusion of bifacial modules from application of the safeguard measure on the basis that it had impaired and was likely to continue to impair the effectiveness of the safeguard action; and

(b) adjusted the safeguard tariff for the fourth year of the safeguard measure from 15 percent to 18 percent on the basis that the exclusion of bifacial modules from application of the safeguard tariffs had impaired the remedial effectiveness of the 4-year action proclaimed in Proclamation 9693, and to achieve the full remedial effect envisaged in that action.

6. On November 16, 2021, the United States Court of International Trade held in *Solar Energy Industries Association et al. v. United States* (SEIA) that the President acted outside of his statutory authority in issuing Proclamation 10101, and enjoined the Government from enforcing that proclamation. This injunction had the effect of reinstating the exclusion of bifacial modules from the safeguard tariffs and lowering the fourth year safeguard tariff to 15 percent. On January 14, 2022, the Government filed a notice of appeal of SEIA to the United States Court of Appeals for the Federal Circuit.

7. On December 8, 2021, in response to petitions by representatives of the domestic industry, the USITC issued its determination and report pursuant to section 204(c) of the Trade Act (19 U.S.C. 2254(c)), finding that safeguard action continues to be necessary to prevent or remedy the serious injury to the domestic industry, and that there is evidence that the domestic industry is making a positive adjustment to import competition (USITC, Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products, Investigation No. TA–201–75 (Extension)).

8. Section 203(e)(1)(B) of the Trade Act (19 U.S.C. 2253(e)(1)(B)) authorizes the President, after receiving an affirmative determination from the USITC pursuant to section 204(c) of the Trade Act (19 U.S.C. 2254(c)), to extend the effective period of any action taken under section 203 of the Trade Act if the President determines that the action continues to be necessary to prevent or remedy the serious injury, and there is evidence that the domestic industry is making a positive adjustment to import competition.

9. After taking into account the information provided in the USITC's report and the information received from the public through the process published in the *Federal Register* on September 30, 2021 (86 FR 54279), pursuant to section 203(e)(1)(B) of the Trade Act (19 U.S.C. 2253(e)(1)(B)), I have determined that the safeguard action on imports of CSPV cells, whether or not partially or fully assembled into other products, continues to be necessary to prevent or remedy the serious injury to the domestic industry, and that there is evidence that the domestic industry is making a positive adjustment to import competition. I have further determined to extend the safeguard measure proclaimed in Proclamation 9693, as modified by Proclamation 10101 (to the extent permitted by law), as follows:

(a) continuation of the TRQ on imports of solar cells not partially or fully assembled into other products described in paragraph 1 of this proclamation for an additional period of 4 years, with unchanging within-quota quantities of 5.0 GW for each year and annual reductions in the rates of duty applicable to goods entered in excess of those quantities of cells in the fifth, sixth, seventh, and eighth years, as described in Annex I to this proclamation;

(b) continuation of the increase in duties on imports of modules described in paragraph 1 of this proclamation for an additional period of 4 years, with annual reductions in the fifth, sixth, seventh, and eighth years, as described in Annex I to this proclamation; and

(c) exclusion of bifacial panels from the extension of duties proclaimed in this paragraph.

10. I have determined that an extension of this safeguard measure will provide greater economic and social benefits than costs.

11. As provided in Proclamation 9693, this safeguard measure shall continue to apply to imports from all countries, except as provided in clause (4) of this proclamation and paragraph 10 of Proclamation 9693.

12. Section 204(a)(2) of the Trade Act (19 U.S.C. 2254(a)(2)) requires the USITC to issue a report on its monitoring of developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition, no later than the midpoint of the period of the extension. After I receive that report, I will evaluate whether to reduce, modify, or terminate the safeguard measure pursuant to section 204(b)(1) of the Trade Act (19 U.S.C. 2254(b)(1)).

13. As proclaimed in Proclamation 9693, the in-quota quantity in each year of the TRQ described in paragraph 9 of this proclamation shall be allocated among all countries except those countries the products of which are excluded from such TRQ pursuant to clause (4) of this proclamation or paragraph 10 of Proclamation 9693.

14. In order to address certain technical errors in the HTS, the HTS is modified as set forth in Annex II to this proclamation.

15. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, including sections 203, 204, and 604 of the Trade Act, do proclaim that:

(1) In order to extend the measure applicable to imports of CSPV cells, not partially or fully assembled into other products, described in paragraph 1 of this proclamation, subchapter III of chapter 99 of the HTS is modified as set forth in Annex I to this proclamation, subject to clauses (3) and (4) below. Any merchandise subject to the safeguard measure that is admitted into United States foreign trade zones on or after 12:01 a.m. eastern standard time on February 7, 2022, must be admitted as “privileged foreign status” as defined in 19 CFR 146.41, and will be subject upon entry for consumption to any tariffs or quantitative restrictions related to the classification under the applicable HTS subheading.

(2) Except as provided in clause (3) below, imports of CSPV products of World Trade Organization Member countries, as listed in subdivision (b) of Note 18 to subchapter III of chapter 99 of the HTS (Note 18), shall continue to be excluded from the safeguard measure extended by this proclamation, and such imports shall not be counted toward the TRQ limits that trigger the over-quota rates of duties.

(3) If, after the extension proclaimed herein is in effect, the USTR determines that:

(a) the share of total imports of a country listed in subdivision (b) of Note 18 exceeds 3 percent;

(b) imports of the product from all listed countries with less than 3 percent import share collectively account for more than 9 percent of total imports of the product; or

(c) a country listed in subdivision (b) of Note 18 is no longer a developing country for purposes of this proclamation;

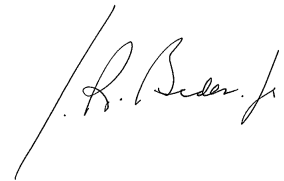
the USTR is authorized, upon publication of a notice in the *Federal Register*, to revise subdivision (b) of Note 18 to remove the relevant country from the list or suspend operation of that subdivision, as appropriate.

(4) I instruct the USTR to enter into negotiations pursuant to section 203(f) of the Trade Act (19 U.S.C. 2253(f)) with Canada and Mexico. In the event that the USTR concludes an agreement that the USTR, in consultation with the Secretary of Commerce and the Secretary of Energy, determines will ensure that imports of Canada or Mexico do not undermine the effectiveness of the action extended through clause (1) of this proclamation, the USTR is authorized, upon publication of a notice in the *Federal Register*, to revise Note 18 to suspend application of that subdivision, in whole or in part, as appropriate, with respect to imports of Canada or Mexico. If the USTR subsequently determines, in consultation with the Secretary of Commerce and the Secretary of Energy, that such an agreement is not effective, the USTR is authorized, pursuant to section 203(f) of the Trade Act, by publication of a notice in the *Federal Register*, to revise Note 18 to terminate any previous suspension of the action with respect to imports of Canada or Mexico.

(5) One year after the termination of the safeguard measure established in this proclamation, the U.S. note and tariff provisions established in Annex I to this proclamation shall be deleted from the HTS.

(6) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of February, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



ANNEX I

TO MODIFY CHAPTER 99 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. on February 7, 2022, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified as set forth herein:

1. Subdivision (c)(i) of U.S. note 18 to subchapter III is modified by deleting “8541.40.60” and by inserting in lieu thereof “8541.42.00”, and by deleting “8541.40.6025” and by inserting in lieu thereof “8541.42.0010”.

2. Subdivision (c)(iii) of U.S. note 18 to subchapter III is modified by deleting the period at the end of subparagraph (16) and inserting in lieu thereof a semicolon, and by inserting at the end thereof the following subparagraph:

“(17) bifacial solar panels that absorb light and generate electricity on each side of the panel and that consist of only bifacial solar cells that absorb light and generate electricity on each side of the cells.”

3. Subdivision (f) of U.S. note 18 to subchapter III is modified by deleting “8541.40.60” and by inserting in lieu thereof “8541.42.00”, and by inserting at the end of the table therein the following staged reductions in rates of duty for the periods herein indicated:

“If entered during the period from
February 7, 2022 through February 6, 2023.....14.75%
If entered during the period from
February 7, 2023 through February 6, 2024.....14.5%
If entered during the period from
February 7, 2024 through February 6, 2025.....14.25%
If entered during the period from
February 7, 2025 through February 6, 2026.....14%”

4. Subdivision (g) of U.S. note 18 to subchapter III is modified by deleting “8541.40.60” and by inserting in lieu thereof “8541.43.00”; by deleting “8541.40.6015” and inserting in lieu thereof “8541.43.0010”; by deleting “8501.61.00” and inserting in lieu thereof “8501.80.10”; and by deleting “8501.31.80” and inserting in lieu thereof “8501.71.00 or 8501.72.10”.

5. Subdivision (h) of U.S. note 18 to subchapter III is modified by deleting “8541.40.60” and by inserting in lieu thereof “8541.43.00”, and by inserting at the end of the table therein the following staged reductions in rates of duty for the period herein indicated:

“If entered during the period from
February 7, 2022 through February 6, 2023.....14.75%
If entered during the period from
February 7, 2023 through February 6, 2024.....14.5%”

If entered during the period from
February 7, 2024 through February 6, 2025.....14.25%
If entered during the period from
February 7, 2025 through February 6, 2026.....14%”.

6. The article description of subheading 9903.45.21 is modified by deleting “2.5” and by inserting in lieu thereof “5”.

ANNEX II

TO MAKE TECHNICAL CORRECTIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after January 27, 2022, the Harmonized Tariff Schedule of the United States is hereby modified as follows:

A. Additional U.S. note 1 to chapter 84 is modified by deleting “8479.89.94” and inserting “8479.89.95” in lieu thereof.

B. The Harmonized Tariff Schedule of the United States is modified by inserting “S” in alphabetical order in the rates of duty 1 – special subcolumn of the following subheadings:

8701.21.00
8701.22.00
8701.23.00
8701.24.00
8701.29.00
8704.22.11

C. U.S. note 15(b)(19) to subchapter XV of chapter 99 is modified by deleting “6303.40.75” and inserting “6202.40.75” in lieu thereof.

D. Subheading 7019.90.51 is modified by deleting from the Rates of Duty 1-Special subcolumn the symbol “A” and by inserting “A*” in lieu thereof.

E. Subheading 2202.99.90 is renumbered as subheading 2202.99.91.